RECORD AND BRIEFS

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No. 15-827

In the Supreme Court of the United States

ENDREW F., A MINOR, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, JOSEPH F. AND JENNIFER F., PETITIONER

v.

DOUGLAS COUNTY SCHOOL DISTRICT RE-1

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The Individuals with Disabilities Education Act provides federal funds to States that agree to make available a "free appropriate public education" (FAPE) to every eligible child with a disability. 20 U.S.C. 1401(9), 1412(a)(1)(A), 1414(d)(1)(A). The question presented is whether the "educational benefit" provided by a school district must be "merely * * * more than *de minimis*" in order to satisfy the FAPE requirement. Pet. App. 16a (citations and internal quotation marks omitted).

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This brief is filed in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted.

STATEMENT

This case involves the core requirement of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*, that States make available a "free appropriate public education" (FAPE) to eligible children with disabilities. 20 U.S.C. 1401(9), 1412(a)(1)(A), 1414(d)(1)(A). Petitioner sued respondent, alleging that respondent had failed to provide him with a FAPE. The state administrative law judge and the federal district court rejected that claim on the ground that petitioner had been able to obtain "some" benefit from his public education. Pet. App. 27a-28a,

51a, 72a, 85a. The court of appeals affirmed, holding that "the educational benefit mandated by IDEA must merely be more than *de minimis*" and that the benefit provided here satisfied that standard. Pet. App. 16a (citations and internal quotation marks omitted).

1. The IDEA (formerly known as the Education of the Handicapped Act) provides federal grants to States "to assist them to provide special education and related services to children with disabilities." 20 U.S.C. 1411(a)(1). The statute's stated purpose is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. 1400(d)(1)(A). The IDEA pursues that objective by requiring States receiving IDEA funds to provide a FAPE to every eligible child with a disability residing in the State. 20 U.S.C. 1412(a)(1)(A). This Court has described the FAPE requirement as embodying Congress's "ambitious objective" in promoting educational opportunities for such children. *School Comm. of Burlington* v. *Department of Educ.*, 471 U.S. 359, 368 (1985) (*Burlington*).

a. The IDEA defines FAPE to mean "special education and related services" that

> (A) have been provided at public expense, under public supervision and direction, and without charge;
>
> (B) meet the standards of the State educational agency;

> (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
>
> (D) are provided in conformity with the individualized education program required under section 1414(d) of [Title 20 of the United States Code].

20 U.S.C. 1401(9).

This Court has explained that the "individualized education program" (IEP) referenced in Subsection (D) of the FAPE definition operates as the "centerpiece" of the IDEA's scheme for providing children with disabilities with a FAPE. *Honig* v. *Doe*, 484 U.S. 305, 311 (1988); see 20 U.S.C. 1401(9)(D). An IEP must comply with specific statutory requirements and establish a special education program to meet the "unique needs" of each child. *Ibid.*; 20 U.S.C. 1414(d)(1)(A); 34 C.F.R. 300.22, 300.34, 300.39, and 300.320. That program must be designed to allow the child to "advance appropriately toward attaining the annual goals [set forth in the IEP]," "to be involved in and make progress in the general education curriculum," "to participate in extracurricular and other nonacademic activities," and "to be educated and participate with other children with disabilities and nondisabled children in [various] activities." 20 U.S.C. 1414(d)(1)(A)(i)(IV). The IDEA generally contemplates that each child's education "will be provided where possible in regular public schools, * * * but the Act also provides for placement in private schools at public expense where this is not possible." *Burlington*, 471 U.S. at 369; see 20 U.S.C. 1412(a)(10)(B).

In *Board of Education of the Hendrick Hudson Central School District* v. *Rowley*, 458 U.S. 176, 207 (1982), the Court held that an IEP must be "reasona-

bly calculated to enable the child to receive educational benefits." The Court elaborated that the education a child receives must confer "some educational benefit" and that the benefit must be sufficient to provide each child with "access" to education that is "meaningful." *Id.* at 192, 200. In light of the "infinite variations" in the capabilities of different children with different disabilities, however, the Court declined "to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act." *Id.* at 202.

b. The IDEA requires school districts to work collaboratively with parents to formulate the IEP for each child with a disability.[1] But Congress anticipated that this process would not always produce a consensus, and it established procedures by which parents can seek administrative and judicial review of a school district's IDEA-related determinations. See 20 U.S.C. 1415(f)-(j); *Burlington*, 471 U.S. at 368-369.

Parents who are not satisfied with an IEP, or with other related matters, must first notify the school district of their complaint. See 20 U.S.C. 1415(b)(6) and (7). If the dispute cannot be resolved through established procedures, the parents may obtain "an impartial due process hearing" before a state or local educational agency. 20 U.S.C. 1415(f)(1)(A)-(B). The losing party may then seek judicial review of a final administrative decision in either state or federal district court. 20 U.S.C. 1415(i)(2)(A). The court receives the records of the administrative proceedings, and it may hear additional evidence before rendering

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[1] See *e.g.*, 20 U.S.C. 1400(d)(1)(B), 1414(b)(2)(A), (d)(1)(B)(i), (d)(3)(A)(ii), (d)(3)(D), (d)(4)(A)(ii)(III) and (e), 1415(b)(1), (b)(3)-(5) and (f)(3)(E)(ii)(II).

its decision. 20 U.S.C. 1415(i)(2)(C). In adjudicating the case, the court must give "due weight" to the result of the state administrative proceedings. *Rowley*, 458 U.S. at 206.

2. Petitioner Endrew F. is a child with attention deficit/hyperactivity disorder and autism. Pet. App. 3a. Petitioner's autism "affects his cognitive functioning, language and reading skills, and his social and adaptive abilities," including his ability to communicate his needs and emotions. *Ibid.*; see *id.* at 28a. As a child with autism, petitioner is eligible for protection under the IDEA. 20 U.S.C. 1401(3); Pet. 6; Br. in Opp. 1.

Petitioner attended public school in respondent Douglas County School District from preschool through fourth grade. Pet. App. 3a-4a. Pursuant to the IDEA, he received a special education program through an IEP for each school year. *Ibid.* In the spring of 2010—near the end of petitioner's fourth-grade year—petitioner's parents met with respondent to discuss petitioner's proposed IEP for the following year. *Ibid.*; Br. in Opp. 2. Petitioner's parents believed that petitioner's fourth-grade IEP had produced no meaningful educational progress, and they rejected respondent's proposed fifth-grade IEP on the grounds that it was largely unchanged from the previous IEP. Pet. App. 4a, 15a. In May 2010, petitioner's parents withdrew petitioner from the public school system and placed him in a private school specializing in educating children with autism. *Id.* at 4a; Br. in Opp. 2. Petitioner has been able to "mak[e] academic, social and behavioral progress" at his new school. Pet. App. 29a.

In 2012, petitioner filed a due-process IDEA complaint with the Colorado Department of Education. Pet. App. 59a. The complaint asserted that respondent had denied him a FAPE within the public school system. *Id.* at 4a, 60a. Petitioner sought reimbursement for his tuition at the private school, pursuant to 20 U.S.C. 1412(a)(10)(C)(ii). *Id.* at 4a; see *Burlington*, 471 U.S. at 369.

After receiving evidence and conducting a three-day hearing, a Colorado administrative law judge (ALJ) ruled in favor of respondent and denied petitioner's request for reimbursement. Pet. App. 59a-85a. Relying on *Rowley*, the ALJ stated that a school district need only develop and implement an IEP that provides a child "*some* educational benefit" in order to comply with the IDEA. *Id.* at 75a (emphasis added). That standard was satisfied, the ALJ concluded, because petitioner had "made some academic progress" while enrolled in respondent's public school system. *Id.* at 84a-85a.

3. Petitioner sued respondent under the IDEA in the United States District Court for the District of Colorado, raising the same basic claim that respondent had denied him a FAPE. Pet. App. 4a. The district court upheld the Colorado ALJ's ruling in respondent's favor. *Id.* at 28a.

Like the ALJ, the district court relied on *Rowley* in holding that the IDEA requires States only to provide "some educational benefit." Pet. App. 36a. Based on evidence that petitioner has made "at the least, minimal progress," *id.* at 49a, the court concluded that petitioner had received all that the Act requires. *Id.* at 51a.

4. The Tenth Circuit affirmed. Pet. App. 1a-26a. It stated that *Rowley* merely requires "some educational benefit." *Id.* at 16a. The court further explained that under its longstanding interpretation of *Rowley*, "the educational benefit mandated by IDEA must *merely be more than de minimis*." *Id.* at 16a (emphasis added; citations and internal quotation marks omitted) (citing circuit precedent).

The court of appeals expressly stated that its "merely * * * more than *de minimis*" standard directly conflicts with the approach taken by other circuits, including the Third and Sixth Circuits. Pet. App. 16a-17a (citations and internal quotation marks omitted). The court described those circuits as "hav[ing] adopted a higher standard"—requiring a "*meaningful* educational benefit"—that promises children "a higher measure of achievement." *Id.* at 17a (emphasis added; citations omitted).

The court of appeals then applied its standard and concluded that "there are sufficient indications of [petitioner's] past progress to find the IEP rejected by the parents substantively adequate under our prevailing standard." Pet. App. 23a. The court acknowledged, however, that "[t]his is without question a close case," and the court did not address whether respondent would prevail under the "higher standard" adopted by other circuits. *Id.* at 17a, 23a.[2]

DISCUSSION

This Court should grant certiorari and overturn the Tenth Circuit's erroneous holding that States must provide children with disabilities educational benefits that are "merely * * * more than *de minimis*" in

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[2] The court of appeals denied rehearing en banc. Pet. App. 86a.

order to comply with the IDEA. Pet. App. 16a (citations and internal quotation marks omitted). That interpretation of the IDEA—which is shared by at least five other courts of appeals—directly conflicts with the published decisions of the Third and Sixth Circuits, both of which have rejected the "more than *de minimis*" test in favor of a more robust standard. The Tenth Circuit's approach is not consistent with the text, structure, or purpose of the IDEA; it conflicts with important aspects of this Court's decision in *Board of Education of the Hendrick Hudson Central School District* v. *Rowley*, 458 U.S. 176 (1982); and it has the effect of depriving children with disabilities of the benefits Congress has granted them by law. The question presented is important and recurring, and this case is an appropriate vehicle for this Court to resolve the conflict in the circuits on the scope of the FAPE requirement. The petition for a writ of certiorari should therefore be granted.

A. There Is An Entrenched And Acknowledged Circuit Conflict On The Question Presented

The central issue raised by the petition is the degree of educational benefit that States must provide to children with disabilities in order to satisfy the IDEA's FAPE requirement. In *Rowley*, this Court declined to establish a single test for such benefits, emphasizing the different capabilities of different children with different disabilities. 458 U.S. at 202. The Court nonetheless concluded that States are required to provide "some" educational benefits and that those benefits must be sufficient to provide each child with "meaningful" access to education. *Id.* at 192, 200.

The courts of appeals are intractably divided over what *Rowley*'s interpretation of the FAPE standard

requires. Whereas at least six circuits adopt some version of the "merely * * * more than *de minimis*" test that the Tenth Circuit applied here, two circuits apply a more robust standard that requires a greater degree of educational benefit. This Court should grant review to resolve the split of authority.

1. In this case, the Tenth Circuit rejected petitioner's IDEA claim based on its longstanding view that a FAPE requires States to provide "some" educational benefit that is "merely * * * more than *de minimis*." Pet. App. 16a (citations and internal quotation marks omitted). At least five other courts of appeals—including the Second, Fourth, Seventh, Eighth, and Eleventh Circuits—apply essentially the same standard.[3] In those circuits, a school district can satisfy the

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[3] See, *e.g.*, *Doe* v. *East Lyme Bd. of Educ.*, 790 F.3d 440, 450 (2d Cir. 2015) ("To be substantively adequate, an IEP * * * must be likely to produce progress that is more than trivial advancement.") (citation and internal quotation marks omitted), cert. denied, 136 S. Ct. 2022 (2016); *O.S.* v. *Fairfax Cnty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015) ("[A] school provides a FAPE so long as a child receives some educational benefit, meaning a benefit that is more than minimal or trivial, from special instruction and services."); *M.B.* v. *Hamilton Se. Sch.*, 668 F.3d 851, 862 (7th Cir. 2011) (requiring IEP that is likely to produce educational progress, "not regression or trivial educational advancement") (citations and internal quotation marks omitted); *Todd* v. *Duneland School Corp.*, 299 F.3d 899, 906 n.3 (7th Cir. 2002) (approving district court's use of a "more than mere trivial educational benefit" test); *K.E.* v. *Independent Sch. Dist. No. 15*, 647 F.3d 795, 810 (8th Cir. 2011) (requiring "some educational benefit" and holding that standard was satisfied because child "enjoyed more than what we would consider slight or de minimis academic progress") (internal quotation marks omitted); *JSK* v. *Hendry Cnty. Sch. Bd.*, 941 F.2d 1563, 1572-1573 (11th Cir. 1991) (requiring merely "some" benefit

IDEA's FAPE requirement by providing educational benefits that are just barely more than trivial.[4]

The Third and Sixth Circuits have expressly rejected that approach in favor of a more robust FAPE standard. In *Ridgewood Board of Education* v. *N.E.*, 172 F.3d 238 (1999) (*Ridgewood*), the Third Circuit held that an IEP must provide "significant learning and meaningful benefit." *Id.* at 247 (internal quotation marks omitted). The court stressed that "the benefit must be gauged in relation to a child's potential." *Ibid.* (citation and internal quotation marks omitted). Most importantly, the court emphasized that "[t]he provision of merely more than a trivial educational benefit" is *not* enough to satisfy the FAPE standard. *Ibid.* (internal quotation marks omitted). In subsequent cases, the Third Circuit has reaffirmed *Ridgewood*'s analysis, including its rejection of the view that providing "merely more than a trivial educational benefit" satisfies the FAPE re-

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and indicating that "a trifle [of benefit] might not" satisfy that standard).

[4] The First and Fifth Circuits have likewise stated that a FAPE requires more than simply a "trivial" or "*de minimis*" benefit, while also noting that the benefit or access provided must be "meaningful." See, *e.g.*, *D.B.* v. *Esposito*, 675 F.3d 26, 34 (1st Cir. 2012); *Rockwall Indep. Sch. Dist.* v. *M.C.*, 816 F.3d 329, 338 (5th Cir. 2016). It is not clear, however, whether those circuits would hold that the provision of anything beyond a trivial benefit necessarily means that the education provided is "meaningful" and thus satisfies the FAPE standard. If so, the governing legal standard in those circuits approximates the standard applied by the Second, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits. Different panels of the Ninth Circuit have disagreed with one another over the correct legal standard. Compare *J.L.* v. *Mercer Island Sch. Dist.*, 592 F.3d 938, 951 n.10 (2010), with *N.B.* v. *Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1212-1213 (2008); see Pet. 14.

quirement. *T.R.* v. *Kingwood Twp. Bd. of Educ.*, 205 F.3d 572, 577 (3d Cir. 2000) (*Kingwood*) (Alito, J.); see *L.E.* v. *Ramsey Bd. of Educ.*, 435 F.3d 384, 390 (3d Cir. 2006) (*Ramsey*).

The Sixth Circuit adopted the Third Circuit's test in *Deal* v. *Hamilton County Board of Education*, 392 F.3d 840 (6th Cir. 2004), cert. denied, 546 U.S. 936 (2005). There, the Sixth Circuit agreed with the Third Circuit's "meaningful educational benefit" standard, and it also agreed with the Third Circuit that "a mere finding that an IEP had provided more than a trivial educational benefit [i]s insufficient." *Id.* at 862 (citation and internal quotation marks omitted). The Sixth Circuit further observed that (1) "[i]n evaluating whether an educational benefit is meaningful, logic dictates that the benefit must be gauged in relation to a child's potential," and (2) "courts should heed" Congress's desire "not to set unduly low expectations for disabled children." *Id.* at 864 (citation and internal quotation marks omitted).

Notably, several courts of appeals adopting the less demanding "more than trivial" or "more than *de minimis*" standard have acknowledged the inter-circuit disagreement over the proper interpretation of the IDEA's FAPE requirement.[5] Indeed, the Tenth Circuit in this case expressly conceded that the Third and Sixth Circuits' "meaningful educational benefit" test reflected a "higher standard" that "promis[es] disa-

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[5] See, *e.g.*, Pet. App. 16a-18a (asserting split between Tenth Circuit, on the one hand, and Third, Fifth, and Sixth Circuits, on the other); *O.S.*, 804 F.3d at 359-360 (noting different standards applied by First, Fourth, Ninth, and Tenth Circuits); *Todd*, 299 F.3d at 905 n.3 (noting split between Third and Seventh Circuits).

bled children a higher measure of achievement" than its own test. Pet. App. 17a.

2. Respondent's efforts (Br. in Opp. 10-25) to minimize or deny the split are not persuasive.

First, respondent correctly points out (Br. in Opp. 10-12) that every circuit adheres to this Court's broad statement in *Rowley* that an IEP must be "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 207. But the agreement on that general point does not change the fact that the courts of appeals are intractably divided over whether that standard is satisfied when the educational benefits provided are barely more than *de minimis*. As discussed above, while many courts of appeals interpret *Rowley* to embrace the barely more than *de minimis* standard, the Third and Sixth Circuits expressly reject that interpretation of *Rowley* and understand the IDEA to require more.

Respondent also errs in contending (Br. in Opp. 12) that the circuit split is over "adjectives" that do not reflect "different standards." It is true that some courts of appeals have used the terms "some" and "meaningful" interchangeably. But the relevant conflict is not between courts that use the term "some" and those that use the term "meaningful." It is between the courts that hold that the IDEA requires the benefit to be merely more than "trivial" or "*de minimis*," and the courts that unambiguously reject that test in favor of a more robust standard. *Ibid.* That is a difference in legal standards, not adjectives.

When it comes down to it, respondent all but concedes the conflict. Respondent acknowledges (Br. in Opp. 19-20) that some courts, including the Tenth Circuit, embrace the merely more than *de minimis*

standard. Respondent also acknowledges (*id.* at 21-22) that Third and Sixth Circuit decisions have affirmatively rejected that standard as insufficient to satisfy the FAPE requirement. Respondent does appear to imply (*ibid.*) that the Third Circuit in *Ramsey* retreated from its decisions in *Ridgewood* and *Kingwood*. And respondent also says (*id.* at 23) that "time has worn the edges off [the Sixth Circuit's decision in] *Deal*." But *Ramsey* expressly reaffirmed that "the provision of merely more than a trivial education benefit" does not meet the requirements of the IDEA. 435 F.3d at 390 (citations and internal quotation marks deleted). And respondent cites no Sixth Circuit case departing from *Deal*'s equally emphatic rejection of the barely more than *de minimis* standard.

In short, the split of authority on the question presented is real, and only this Court can resolve it. There is no justification for providing children with disabilities different degrees of protection under federal law depending on where they happen to live. This Court should clarify the proper FAPE analysis and establish a uniform standard to guide courts, state educational agencies, and parents across the country.

B. The Tenth Circuit's "Merely * * * More Than *De Minimis*" Standard Is Erroneous

The Tenth Circuit's view that a State can satisfy the IDEA's FAPE requirement by providing children with disabilities educational benefits that are "merely * * * more than *de minimis*" is mistaken. Pet. App. 16a (citations and internal quotation marks omitted). That interpretation is not consistent with the IDEA's text or structure, with this Court's analysis in *Rowley*, or with Congress's stated purposes. This Court should hold that States must provide children with

disabilities educational benefits that are meaningful in light of the child's potential and the IDEA's stated purposes. Merely aiming for non-trivial progress is not sufficient.

1. The Tenth Circuit's standard does not square with the IDEA's requirement that the education provided be "appropriate." See 20 U.S.C. 1412(a)(1)(A) (requiring States to provide a "free *appropriate* public education") (emphasis added); see also 20 U.S.C. 1401(9)(C) (defining FAPE to require "an *appropriate* preschool, elementary school, or secondary school education in the State involved"). Standard dictionaries define "appropriate" to mean "specially suitable," "fit," or "proper," *Webster's Third New International Dictionary* 106 (1993) (capitalization omitted), or "suitable or proper in the circumstances," *The New Oxford American Dictionary* 76 (2d ed. 2005).

The "merely * * * more than *de minimis*" test is not compatible with the ordinary meaning of "appropriate." No parent or educator in America would say that a child has received an "appropriate" or a "specially suitable" or "proper" education "in the circumstances" when all the child has received are benefits that are barely more than trivial. That is particularly true when a child is capable of achieving much more.

Taken to its logical conclusion, the "merely * * * more than *de minimis*" test could lead to results that Congress plainly did not intend when it required an "appropriate" education. Consider a child whose hearing is impaired and requires assistive technology (such as an amplification device) in order to understand her teachers' instruction. See 20 U.S.C. 1414(d)(3)(B)(iv) and (v). If the school provides the device in the child's social studies class—but refuses

to do so for her math, reading, and science classes—the child may well make progress on her IEP goals in social studies, even while attaining no educational benefit whatsoever in any other subject. It would be absurd to describe the child's overall education as being "appropriate" for that child. Yet, under a literal understanding of the "merely * * * more than *de minimis*" test, the child would have received just that.

2. The structure of the IDEA likewise undermines the Tenth Circuit's approach. Most importantly, 20 U.S.C. 1414(d) makes clear that the IEP must be carefully tailored to the particular needs and abilities of each child, see 20 U.S.C. 1414(d)(1)(A)(i)(I), and it requires a clear statement of "measurable annual goals" in light of those needs and abilities, 20 U.S.C. 1414(d)(1)(A)(i)(II). Section 1414(d) also requires special education and related services to enable each child "to advance appropriately toward attaining the annual goals." 20 U.S.C. 1414(d)(1)(A)(i)(IV).

Section 1414(d)'s description of the IEP's requirements cannot be reconciled with the Tenth Circuit's "merely * * * more than *de minimis*" standard. Congress would not have instructed States to develop each child's IEP with such a clear focus on promoting measureable annual progress—gauged in light of the particular needs and capabilities of each child—if at the end of the day all it wanted to require was that States provide some degree of educational benefit that is barely more than trivial. The IDEA's IEP provisions provide reliable insight into what level of education Congress would have deemed "appropriate" for purposes of the FAPE requirement.[6] Indeed, Con-

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[6] See generally, *e.g.*, *Sossamon* v. *Texas*, 563 U.S. 277, 286 (2011) (looking to statutory context to determine what relief is "appropri-

gress expressly requires a FAPE to be "provided in conformity with the [IEP] required under [S]ection 1414(d)." 20 U.S.C. 1401(9)(D).

3. The Tenth Circuit's "merely * * * more than *de minimis*" standard also conflicts with the Court's analysis in *Rowley*. *Rowley* makes clear that States must provide children with "some" benefits so that access to education is actually "meaningful." 458 U.S. 192, 200. In isolation, "some" benefits could conceivably mean benefits that are anything more than nothing or its legal equivalent of *de minimis*. But the term "meaningful access" cannot bear that meaning. See, *e.g.*, *Merriam-Webster's Collegiate Dictionary* 769 (11th ed. 2005) (defining "meaningful" as "significant"); *The New Oxford American Dictionary* 1052 ("having a serious, important, or useful quality or purpose"). Thus, when *Rowley* indicated that that "some" benefits must be provided to ensure "access" to education that is "meaningful," it could not have meant that the benefits could be barely more than *de minimis*. 458 U.S. 192, 200. Only "meaningful" or "significant" benefits can afford such "meaningful" access.

The Tenth Circuit's test also contradicts *Rowley*'s emphasis on the "dramatically" different capabilities of different children with different disabilities. 458 U.S. at 202. *Rowley* cited those different capabilities

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ate" under 42 U.S.C. 2000cc-2(a); *West* v. *Gibson*, 527 U.S. 212, 217-218 (1999) (holding that meaning of term "appropriate" depends on statutory context); see also *Michigan* v. *EPA*, 135 S. Ct. 2699, 2707 (2015) (explaining that "appropriate" is "the classic broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors") (citation and quotation marks omitted).

in explaining why it was declining "to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act." *Ibid.* The Tenth Circuit's test focuses only on whether the child has attained some degree of non-trivial benefit, and it does not require any consideration of how that benefit compares to the child's capabilities and potential. In doing so, the test departs from the child-specific analysis envisioned by *Rowley*.

4. Finally, in deciding what constitutes an "appropriate" education, Congress's stated purposes must be taken into account. See *Forest Grove Sch. Dist.* v. *T.A.*, 557 U.S. 230, 239-245 (2009) (emphasizing that IDEA must be interpreted in light of its "remedial purpose"); see also *School Comm. of Burlington* v. *Department of Educ.*, 471 U.S. 359, 369 (1985) (holding that what constitutes "appropriate" relief in IDEA district court action must be determined "in light of the purpose of the [IDEA]"). The "merely * * * more than *de minimis*" standard undermines Congress's purposes.

Congress expressly stated that the IDEA's "purposes" include "ensur[ing] the effectiveness of[] efforts to educate children with disabilities" and providing such children with a FAPE that would "meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. 1400(d)(1)(A) and (4). It further explained that the IDEA was targeted to "[i]mproving educational results for children with disabilities" and thereby helping to "ensur[e] equality of opportunity, full participation, independent living, and economic self-sufficiency" for such individuals. 20 U.S.C. 1400(c)(1). Congress also emphasized the importance of setting

"high expectations"—and avoiding "low expectations"—for children with disabilities. 20 U.S.C. 1400(c)(4) and (5). These robust statements of congressional intent are not consistent with the Tenth Circuit's minimalist interpretation of the FAPE requirement.

Indeed, if school districts provide benefits that are barely more than *de minimis*, it would make the accomplishment of Congress's stated purposes nearly impossible. No reasonable school district sets out to provide educational benefits to its non-disabled children that are barely more than trivial. Providing children with disabilities such limited benefits would therefore deprive them of any semblance of "equality of opportunity." 20 U.S.C. 1400(c)(1). If all that is provided are just above *de minimis* benefits, it is hard to imagine that disabled children will be prepared for "further education, employment, and independent living." 20 U.S.C. 1400(d)(1)(A). And rather than promote "higher expectations," the barely more than *de minimis* standard expressly *lowers* expectations.

That does not mean the IDEA requires States to "maximize each child's potential," *Rowley*, 458 U.S. at 198. Nor does it mean that States must "achieve strict equality of opportunity or services." *Ibid.* But given Congress's stated purposes, States must do more than provide merely more than *de minimis* benefits.

4. For the reasons noted above, this Court should reject the Tenth Circuit's "merely * * * more than *de minimis*" interpretation of the FAPE requirement. Instead, the Court should make clear that the IDEA—as interpreted by *Rowley*—ultimately requires States to provide children with disabilities access to educational benefits that are meaningful in light of the

child's potential and the purposes of the Act. See 20 U.S.C. 1412(a)(1)(A); *Rowley*, 458 U.S. at 192. In applying that standard, courts must grant "due weight" to the child-specific decisions made by State educational agencies and educators. *Rowley*, 458 U.S. at 206; see also *id.* at 207 ("[C]ourts must be careful to avoid imposing their view of preferable educational methods upon the States.").

C. The Question Presented Is Important And Recurring, And The Court Should Resolve It In This Case

The degree of educational benefit contemplated by the IDEA's FAPE requirement presents a fundamental question of federal education law. This Court has explained that the FAPE requirement is the statutory mandate "most fundamental" to the IDEA and that "[t]he adequacy of the [child's] educational program is, after all, the central issue" in IDEA litigation. *Winkelman* v. *Parma City Sch. Dist.*, 550 U.S. 516, 530, 532 (2007); see 20 U.S.C. 1415(f)(3)(E). How a school district must satisfy its obligation to provide a FAPE frequently arises, both in litigation (as the circuit conflict described above establishes) and in everyday decisions made by educators and parents in developing IEPs for children with disabilities.

The question whether the IDEA requires benefits that are barely more than *de minimis* or instead imposes a more robust standard is also one of great practical significance. If school districts are told that a FAPE requires merely that they provide children with disabilities with educational benefits that are "more than trivial" or "more than *de minimis*"—*i.e.*, if they are told that it is perfectly fine to aim low—they are less likely to offer the same educational opportunities than if they are told that children with disabilities

must receive "meaningful" benefits in light of each child's potential and the IDEA's stated goals. As a practical matter, the choice of legal standard is likely to shape the conduct and choices of educators and parents when developing IEPs for children with disabilities.

The choice of standard can also be outcome-determinative when a school district's decision is subject to judicial review. The Third Circuit's decision in *Ridgewood*, *supra*, provides an example. There, the court of appeals overturned the district court's decision in favor of the school district because the lower court had applied the erroneous "more than a trivial educational benefit" standard. *Ridgewood*, 172 F.3d at 243 (vacating and remanding the district court's decision on that basis).

The Tenth Circuit's decision in this case further illustrates that the choice of standard can make a difference. Here, the court of appeals emphasized that "[t]his is without question a close case" under its less-demanding "merely * * * more than *de minimis*" test. Pet. App. 16a, 23a (citations and internal quotation marks omitted). The Tenth Circuit's acknowledgment of the closeness of the case offers good reason to believe that the outcome may well have been different under the "higher standard" that the court acknowledged is applied by other circuits. *Id.* at 17a. The same will undoubtedly be true in other cases.

Finally, if petitioner and the government are correct, students across the country are being denied the "meaningful" educational benefits to which they are entitled by law. This Court should grant review to decide the proper legal standard for determining the required level of benefit States must provide and vin-

dicate Congress's sustained effort to promote opportunities for children with disabilities.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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